

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BRENDA JUNE PIOTROWSKI,

Defendant-Appellee.

UNPUBLISHED

May 19, 2005

No. 251670

Macomb Circuit Court

LC No. 03-000171-AR

Before: Griffin, P.J., and Bandstra and Hoekstra, JJ.

GRIFFIN, P.J. (*concurring*).

I join in that portion of the majority’s opinion holding defendant was denied her statutory right, MCL 257.625a(6)(d), to a “reasonable opportunity” to obtain an independent chemical test. However, in regard to the remedy for the statutory violation of dismissal with prejudice, I concur in the result only because I am compelled to follow the precedent of *People v Koval*, 371 Mich 453; 124 NW2d 274 (1963). I urge our Supreme Court to grant leave on this case and overrule *People v Koval*.

Dismissal with prejudice is the most drastic of all sanctions for a statutory violation. Moreover, rules of automatic dismissal or automatic reversal are now disfavored. *People v Graves*, 458 Mich 476, 481-482; 581 NW2d 229 (1998). In regard to the lesser sanction of suppression of the evidence, our Supreme Court has recently stated: “[w]hether the exclusionary rule should be applied to evidence seized in violation of a statute is purely a matter of legislative intent.” *People v Hawkins*, 468 Mich 488, 500; 668 NW2d 602 (2003). In *People v Dicks*, 190 Mich App 694, 698; 476 NW2d 500 (1991), our Court stated: “The intent of the Legislature in enacting MCL 257.625a(5); MSA 9.2325(1)(5) was to allow the production and preservation of chemical evidence in an orderly manner.” For the reasons stated in *People v Dicks*, I urge our Supreme Court to hold that the remedy intended by the Legislature for violation of the statute is the suppression of all breathalyzer and chemical test results, not the disfavored dismissal with prejudice of all charges.

/s/ Richard Allen Griffin